

Message Text

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PAGE 01 BRASIL 00260 121206Z
ACTION EB-03

INFO OCT-01 ISO-00 ARA-06 L-01 SSO-00 SS-14 INR-05 INRE-00
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O R 121000Z JAN 77
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC IMMEDIATE 9440
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

C O N F I D E N T I A L BRASILIA 0260

STADIS////////////////////////////////

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E.O. 11652: GDS
TAGS: EAIR, BR
SUBJ: BRASILIAN POLICY ON CHARTER PRICES

REF: STATE 004758

1. I AM MORE THAN UNEASY, I AM SHOCKED, BY THE POSITION
DESCRIBED IN PARA 2 OF REFTTEL. I CONSIDER IT LEGALISTIC
EVASION WORTHY OF THE CUTEST AND MOST WEASELLY PHILADELPHIA
LAWYER. IT COMES VERY CLOSE TO BEING SHEER BAD FAITH.

2. THE DEPARTMENT AND THE EMBASSY, FOLLOWING STRICTLY THE
DEPARTMENT'S GUIDANCE, HAVE BEEN TRYING ENERGETICALLY FOR
WELL OVER A YEAR TO OBTAIN FOR NON-SCHEDULED CARRIERS
EXEMPTION FROM THE FUEL TAX. IN THE FACE OF EVASION,
SLIPPERINESS AND NEAR BAD FAITH ON THE PART OF THE GOB--
WHICH, REPREHENSIBLE THOUGH THEY ARE, ARE NEITHER EXCUSES
NOR JUSTIFICATION FOR EVEN SHABBIER PRACTICES BY THE USG --
THE DECISION WAS MADE BY PROPOSE FORMALLY, AS
A VEHICLE FOR GETTING THE EXEMPTION, AN EXCHANGE OF NOTES
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IN WHICH THE GOB WOULD PROVIDE THE EXEMPTION, ACCOMPANIED
BY AN EXPLICIT UNDERTAKING TO BE READY TO DISCUSS A
BILATERAL CHARTER AGREEMENT ONCE THE NOTES WERE EXCHANGED.
THE TWO STEPS WERE INEXTRICABLY LINKED. GIVEN THE HISTORY
OF VARIOUS SUGGESTIONS TO THE GOB BY THE USG TO OBTAIN
THE EXEMPTION, THERE CAN BE ABSOLUTELY NO QUESTION BUT
THAT THE PROPOSED EXCHANGE OF NOTES WAS A MEANS TO AN END --

THE GRANTING OF THE EXEMPTION -- AND NOT AN END IN ITSELF.

3. THE GOB GRANTED THE EXEMPTION IN A TYPICALLY BRAZILIAN MANEUVER, WHOSE INDIRECT AND QUIET MANNER OF EXECUTION QUITE POSSIBLY WAS THE CONSEQUENCE OF LEGITIMATE CONCERN ABOUT THE LEGALITIES CONNECTED WITH THE 1953 LAW. NO MATTER HOW BYZANTINE OR INELEGANT THE MEANS BY WHICH THE EXEMPTION WAS CONCEDED, IT REMAINS A FACT THAT THE USG OBTAINED THE RESULT IT HAD BEEN SEEKING TO ASSIDUOUSLY.

4. IT IS ENTIRELY TRUE, AS THE REFTTEL SAYS IN WHAT IS JUST ABOUT THE ONLY SOLID PART OF PARA 2 OF THE TELEGRAM, THAT IT IS NOT YET CERTAIN THAT THE REMOVAL OF THE DISCRIMINATORY TAX ON THE NON-SKEDS IS PERMANENT AND DEFINITE. WE IN THE EMBASSY RECOGNIZED THIS FACT WHEN WE WERE PREPARING BRASILIA 10652, AND WE CONSIDERED, AS WE STILL DO, THAT ASSURANCES OF THE PERMANENCE AND DEFINITIVENESS OF THE EXEMPTION WOULD OBVIOUSLY HAVE TO BE GIVEN US BY THE GOB BEFORE THE DISCUSSIONS OF A CHARTER BILATERAL COULD BEGIN. WE ESTIMATED AT THE TIME THAT WE COULD GET THOSE ASSURANCES.

5. NOW THE DEPARTMENT, WHICH, WE APPRECIATE, WAS AND IS NOT HAPPY ABOUT THE PROSPECT OF NEGOTIATING A CHARTER BILATERAL, IS SAYING IN EFFECT THAT, SINCE THE GOB DID NOT GRANT THE EXEMPTION IN THE WAY WE PROPOSED (EXCHANGE OF NOTES), WE ARE IN NO WAY OBLIGED TO PERFORM ON THE UNDERTAKING TO ENTER INTO DISCUSSIONS OF A CHARTER BILATERAL, EVEN THOUGH THE END WE SOUGHT HAS BEEN ATTAINED BY A DIFFERENT KIND OF CONFIDENTIAL

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GOB ACTION. THE ARGUMENT, TORTUROUS AND SUPERFICIALLY CLEVER AS IT IS, MAY FORM A BASIS FOR ALLEGING THAT THE USG HAS NO LEGAL RPT LEGAL COMMITMENT IN THE STRICT SENSE. IT COMPLETELY IGNORES THE MORAL COMMITMENT, WHICH, TO REPEAT, IS THAT, IF AN WHEN THE GOB GAVE US SATISFACTION ON THE FUEL TAX EXEMPTION, WE WOULD TALK ABOUT A CHARTER BILATERAL. THE STATEMENT "NO SUCH COMMITMENT EXISTS NOR CAN IT REASONABLY BE INFERRED" SOUNDS TOUGH AND BOLD AND ASSURED, BUT, IF TRUTH AND HONESTY ARE THE STANDARDS TO BE APPLIED, IT BECOMES EMBARRASSING BLUSTER. IN LIGHT OF THE HISTORY OF THIS QUESTION, IS THE DEPARTMENT REALLY PREPARED TO PUT THAT RINGING BUT HOLLOW AND DANGEROUS STATEMENT IN A FORMAL NOTE SHOULD THE GOB EVENTUALLY SEND US A NOTE REQUESTING TALKS? I AM NOT.

6. CONCERNING THE IMPLICIT INTENT TO CONNECT THE (LEFT-HANDED) GRANTING OF THE FUEL TAX EXEMPTION TO NON-SKEDS AND THE UNDERLINE ALINEA M END UNDERLINE PROBLEM, I BELIEVE THAT THE TWO SHOULD NOT BE LINKED. THE NEW TAX OR CHARGE OR FEE

THAT IS ESTABLISHED IN UNDERLINE ALINEA M END UNDERLINE IS
A PROBLEM COMMON TO ALL CARRIERS, SCHEDULED OR NON-SCHEDULED,
US OR OTHER FLAGS. IT IS NOT DISCRIMINATORY AGAINST NON-SKEDS,
WHICH WAS THE PROBLEM WITH THE FUEL TAX. IN OTHER WORDS, THE
FIGHT AGAINST UNDERLINE ALINEA M END UNDERLINE IS IN FACT A
SEPARATE BATTLE TO BE CONDUCTED ON A BROAD FRONT. IF, AS IS
EVIDENT, THE DEPARTMENT IS GRYING BY ANY MEANS TO AVOID
HONORING THE US COMMITMENT TO SIT DOWN AND DISCUSS A CHARTER
BILATERAL, THEN THE UNDERLINE ALINEA M END UNDERLINE QUESTION
AFFORDS AN UNCOMFORTABLY PHONY BUT NOT TOTALLY IMPLAUSIBLE BASIS
FOR BOBBING AND WEAVING. BUT THE MAINTENANCE OF THE INSTRUCTION
IN PARA 3 WOULD NOT ONLY COMPROMISE THE INTEGRITY OF THIS
EMBASSY AND THE USG BUT ALSO INCUR SERIOUS RISKS OF A
WARRANTEDLY STRONG GOB REACTION THAT WOULD, BY PUTTING US
FOR THE FIRST TIME ON THE DEFENSIVE, JEOPARDIZE OUR
EFFORTS TO ADVANCE THE U.S. AVIATION INTEREST HERE.

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7. THEREFORE, I REQUEST THAT THE DEPARTMENT RECONSIDER
ITS POSITION. MEANWHILE, I DO NOT INTEND TO TAKE THE
ACTION CALLED FOR IN PARA 3.
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